

Drawing a line: Why shore access in R.I. might be even more limited than it appears

Experts say the mean high tide line is farther seaward than many people think

By [Brian Amaral](#) Globe Staff, Updated October 14, 2021, 7:17 p.m.



Right now, the boundary for public access to the beach is generally recognized by courts as the mean high tide line. The problem with that, according to critics, is that it's impossible to see with the naked eye. STAN GROSSFELD/ GLOBE STAFF

For decades, Rhode Island courts have recognized the legal line between public access

For decades, Rhode Island courts have recognized the legal line between public access and private rights along the shore at what's called the mean high tide line.

But that line actually provides less access than many people think, according to experts. And that presents conflicts with Rhode Islanders' guaranteed constitutional rights to do things like collect seaweed, pass along the shore, fish and swim.

It all gets fairly technical, but the reality is, using the mean high tide line as the measurement for public access means people often only have access below it for a few hours a day.

And as sea level rises, the problem will get even worse.

"Over a typical day, on average, there's only a few hours where one could potentially walk below the mean high water line on a wave-dominated shoreline and be at a point where your feet aren't getting wet," Nathan Vinhateiro, the assistant director of the University of Rhode Island's Coastal Institute, told a state study commission in a windowless basement room of the State House Thursday.

Last year and again this year, state lawmakers proposed a bill that would decriminalize trespassing if people were within 10 feet of the most recent high tide.

The bill didn't go anywhere, and instead the House created this commission, which is made up of stakeholders and two representatives. It met for the third time Thursday.

The 12-member volunteer panel heard from Vinhateiro and Janet Freedman, a senior fellow at URI's Coastal Institute, on a subject that's filled in equal measure with hard science and huge implications for shoreline access.

As it stands now, the boundary for public access is generally recognized by courts, cities and towns as the mean high tide line. If a town can prove beyond a reasonable doubt you knew where it was and were above it, you can be subject to a trespassing arrest. But the problem with that, according to critics, is that it's impossible to see with the naked eye.

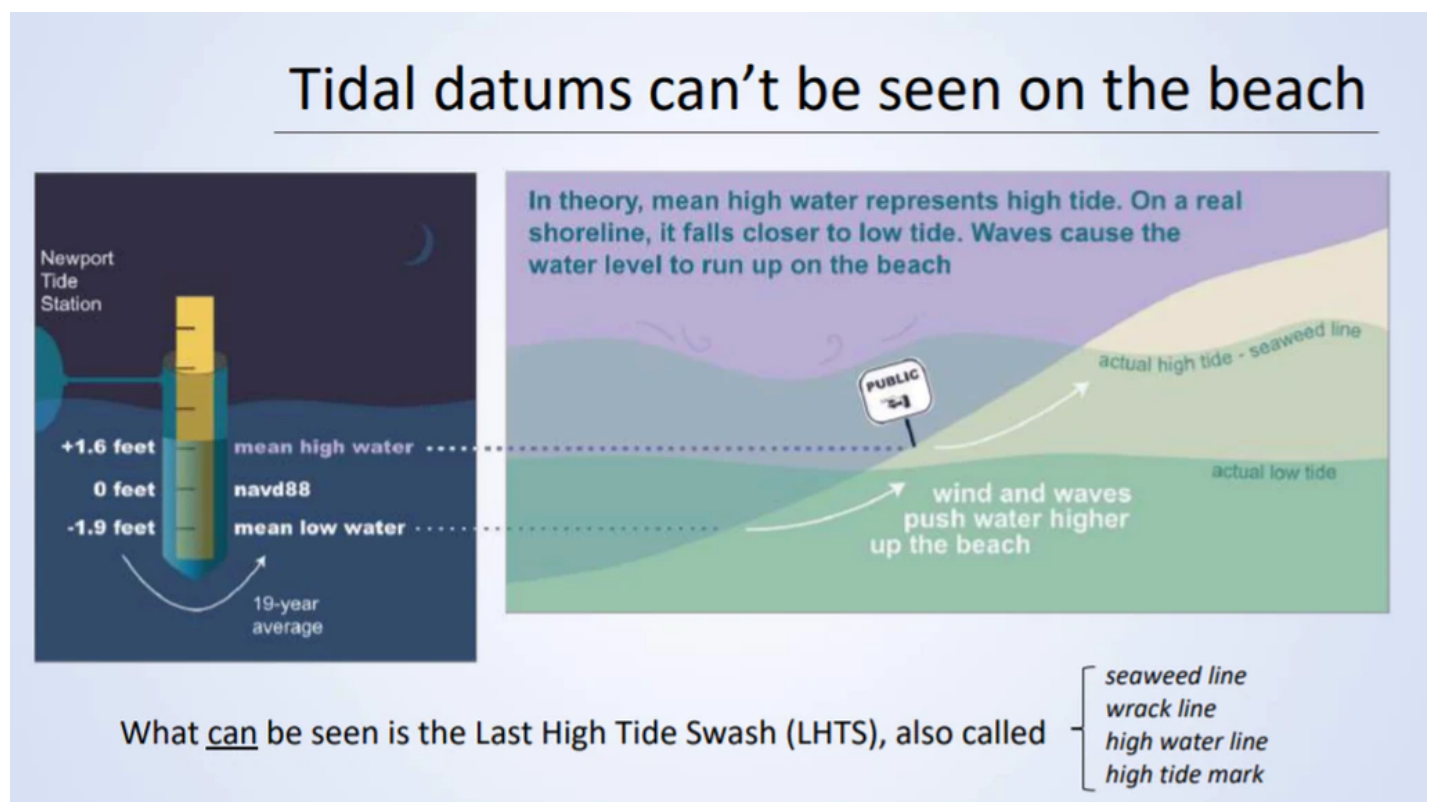
It's an average of high tides taken over a roughly 19-year cycle. How can people exercise their rights if they can't see where they can do it without fear of arrest or harassment?

But there's another problem with the mean high tide: It's farther seaward than many people might think.

That's because the line is the place the average high water height intersects with the shore — but it excludes waves and wind action. Rather than a measurement of how high the water goes on a beach, it's a horizontal measurement of still water, like the highest line in your bathtub rather than the farthest splash of your leaky shower head.

So even if wind blows water farther onto a beach, and foamy waves crash ashore, the average high tide can be, and often is, much farther seaward. In some places around Rhode Island the distance between the farthest place the waves reach and the mean high tide line can reach more than 60 feet.

Freedman and Vinhateiro used a graphic illustration to show how the mean high tide line might actually be closer to low tide:



An illustration from a presentation by two URI Coastal Institute experts demonstrates that the mean high tide line is farther seaward than many people might assume. UNIVERSITY OF RHODE ISLAND COASTAL INSTITUTE

Traditionally, some Rhode Islanders consider the line for access to be the seaweed line. If you're below seaweed, you're all good. After all, something brought it there: a high tide.

But in the state Supreme Court case from 1982, called *State v. Ibbison*, the court set the boundary for public access at the mean high tide line. This followed the tradition of many other states, as well as the U.S. Supreme Court.

Not every state, though, has such a well articulated right to access the shore as Rhode Island, and pro-access advocates say the *Ibbison* decision conflicts with that tradition. Going back to its founding royal charter, Rhode Islanders have had access to the shore. In 1986, state voters approved a constitution formalizing some of those rights, including collecting seaweed and passage along the shore.

How do you collect seaweed or pass along the shore if the boundary for those rights is often underwater?

Vinhateiro and Freedman had the data to back up the conundrum. They went out to South Kingstown Town Beach over three typical beach days in July, August and September this year. They plotted out where the mean high tide line was in real time, using fancy GPS equipment. Then, over a tide cycle, they measured where the actual water was on the beach to figure out how much time over the course of a day someone would have access to dry sand.

The results were discouraging: On one day, people had what they considered "walkable beach," or at least 6 feet of dry sand for two people to walk abreast, for just 30 minutes. On another day, they had zero minutes. Of the three days, the longest anyone would have some measure of continuous access was just three hours and 45 minutes, and often not very much elbow room — constitutional rights, in single file.

There's another problem, too: While the mean high tide line itself doesn't change

vertically day by day, the beach itself changes through erosion and accretion, so where it intersects with the shore can change.

“Not only is it hard to measure, and it’s not where we think it is, even when we can find it, it can move over time,” Vinhateiro said.

Sea level rise, Freedman said, will only accelerate the problem, especially because the mean high tide line itself is based on a data from a 19-year period some time in the past. Right now, the most recent data was collected from 1983 to 2001. New data from 2002 to 2020 is coming, but not until 2025.

“That’s going to be an issue that’s more and more of a problem going forward, especially as we see the rate of sea level rise accelerating,” Freedman said.

This all presents a fundamental conflict — a difficult one, with a lot at stake — that the study commission is working to resolve. Some have gone so far as to argue the Ibbison decision’s holding is not just bad, [but no longer valid at all](#).

People who advocate for property rights, on the other hand, say the mean high tide line is perfectly sensible and reasonable. And, they say, if the state tried to change it, it would face a number of lawsuits from taking what they consider their property.

The 12-member panel also heard Thursday from one of its own members: Dennis Nixon, a recently retired URI professor and lawyer who helped write the 1986 state constitution, and to shape its provisions about shorelines and seaweed.

Nixon said he supported the 10-foot-of-dry-sand decriminalization bill, and rejected claims that passing it would mean huge lawsuits against the state for taking people’s property without compensation.

It’s akin to a sidewalk. People might technically own the property, but the public has the right to traverse it, Nixon said. That doesn’t mean there’s a constitutional right to throw down a blanket and have a picnic, Nixon said. There’s a lot of confusion on the pro-

access and pro-property rights sides, he said.

“Both sides are very far apart,” Nixon said. “That’s why I think any change must be incorporated with a really good educational program to show what this law would do and what it wouldn’t do.”

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